

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RUSSELL D. BALCH,

Plaintiff,

vs.

Civil Action 2:08-CV-976  
Judge Holschuh  
Magistrate Judge King

OHIO DEPARTMENT OF CORRECTIONS,  
*et al.*,

Defendants.

ORDER AND  
REPORT AND RECOMMENDATION

Plaintiff, a state inmate, brings this action under 42 U.S.C. §1983, seeking compensatory and punitive damages allegedly resulting from the failure on the part of prison officials to perform surgery on plaintiff's shoulder in 2006. This matter is now before the Court on the initial screen of the complaint required by 28 U.S.C. §§1915(e), 1915A.

Plaintiff names the Ohio Department of Rehabilitation and Correction and various correctional institutions as defendants. States and their agencies are not "persons" subject to suit under §1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65 (1989). Thus, it is **RECOMMENDED** that the defendant state agencies be dismissed from this action. The Court expresses no opinion on the timeliness of the action, on the personal involvement of any of the remaining defendants or on the merits of plaintiff's allegations.

Should plaintiff provide the required service forms, the United States Marshal Service will be **DIRECTED** to effect service of process on each remaining defendant, who shall have forty-five (45) days

from the date of service to respond to the complaint.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

October 20, 2008

s/Norah McCann King  
Norah McCann King  
United States Magistrate Judge